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5 BEFORE THE
6 CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
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8 In the Matter of:

9 WARING'S DUMP;
10 KRISHNA LIVING TRUST; AND,
11 RAGHVENDRA SINGH;

12 Appellant

13 vs.

14 SACRAMENTO COUNTY
15 ENVIRONMENTAL MANAGEMENT
16 DEPARTMENT, Local Enforcement Agency,)

17 Respondent

) **BOARD STAFF REPORT**

)
) APPEAL OF DECISION BY THE OFFICE
) OF ADMINISTRATIVE HEARINGS
) REGARDING NOTICE OF PENALTY
) ASSESSMENT AND PENALTY ORDER
) ISSUED MARCH 7, 2007 BY
) SACRAMENTO COUNTY
) ENVIRONMENTAL MANAGEMENT
) DEPARTMENT AS THE LOCAL
) ENFORCEMENT AGENCY

PUBLIC RESOURCES CODE § 45030

Preliminary Hearing

Date: October 11, 2007

Time: 11:00 a.m.

Location: Coastal Hearing Room, 2nd Floor,
Joe Serna Cal/EPA Building, 1001 I Street,
Sacramento, California

21 This Staff report is in furtherance of that certain letter dated September 25, 2007 from
22 Elliot Block, counsel for the Board members of the California Integrated Waste Management
23 Board ("CIWMB") hearing the above-entitled appeal, regarding "Procedures For Board Hearing
24 On Determination Of Whether Or Not To Accept The Appeal Of Decision By The Office Of
25 Administrative Hearings" (the "Procedures Letter"). In the Procedures Letter, counsel for the
26 Board advised the parties to the appeal and CIWMB Staff as follows:
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1 "[This] hearing to enable the Board to comply with Public Resources Code Section
2 45031 which provides in pertinent part that:

3 Within 30 days from the date that an appeal is filed with
4 the board, the board may do any of the following:

5 (a) Determine not to hear the appeal if the appellant fails to raise
6 substantial issues...

7 (c) Determine to accept the appeal and to decide the matter on the
8 basis of the record before the hearing panel, or based on written
9 arguments submitted by the parties, or both.

10 (d) Determine to accept the appeal and hold a hearing, within 60
11 days, unless all parties stipulate to extending the hearing date.

12 The Board shall make its determination based upon the Administrative Record before the
13 Office of Administrative Hearings (which includes the ALJ Decision), the Notice of
14 Appeal and the written briefings and/or oral presentations by the parties and Board Staff
15 on which of the above three procedures should govern the disposition of this appeal."

16 In accordance with the above, CIWMB Staff hereby recommend that the following procedure as
17 set forth in Public Resources Code ("PRC") Section 45031(c) govern the disposition of this
18 appeal. Specifically, CIWMB Staff recommend that:

19 (1) The Board accept the appeal; and

20 (2) Decide the matter on the basis of both:

21 a. The record before the hearing officer

22 b. Written arguments submitted by the parties.

23 The bases for CIWB Staff's recommendation are as follows:

24 A. Appellant was provided sufficient opportunity before the hearing officer below to
25 fully present the legal and factual bases for his appeal. The hearing took place over
26 the course of five days, producing a transcript of approximately 1,560 pages and
27 thousands of pages of exhibits, all of which would become a part of the record on
appeal if the above-recommended procedure is adopted by the Board;

B. The Notice of Appeal filed by Appellant consists of legal issues (as Appellant has
acknowledged to Staff), which do not appear to require further evidentiary
development and primarily relate to the following:

1. Appellant claims that DTSC and/or the Water Board have jurisdiction over
Waring's Dump based on PRC section 48022, subdivision (h), which gives
these agencies authority to exert "direct oversight" over the remediation of
hazardous substances and hazardous waste at burn dump sites.

2. Appellant asserts that the EMD lacks jurisdiction over the Waring's Dump because, under the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Saf. Code, §§ 25300-25395.40) (HSAA), DTSC and/or the Water Board have exclusive jurisdiction over all remedial response actions.
3. Appellant claims that the Title 27 regulations that were the basis of EMD's Notice and Order are only applicable to operators of solid waste facilities, and cannot be applied against the owners of Waring's Dump, including appellant.
4. Appellant claims that EMD's authority over Waring's Dump is derived exclusively from PRC sections 48021 – 48023.5, and that the portions of the PRC requiring provision of a closure plan and allowing enforcement actions do not apply to Waring's Dump.
5. Appellant contends that the hearing procedure set forth in PRC section 44310, under which this proceeding is being conducted, is only applicable to the suspension or revocation of permits, and is therefore invalid as applied against appellant.
6. Appellant claims that PRC sections 48020 – 48023.5 do not apply to Waring's Dump because it was not a burn dump site.
7. Appellant claims that EMD did not fulfill the legal requirements of remediation as set forth in the Code of Federal regulations, including but not limited to performing an analysis of the costs and effectiveness of the remedial alternatives, the holding of public meetings and inclusion of the site on the National Priority List.

Unless the parties stipulate to a waiver of the timelines for the final hearing, there is limited time to brief these legal issues and have the matter submitted to the Board by the November 13, 2007 deadline (as November 12th is a holiday). Thus Staff proposes the following briefing schedule:

1. The parties shall submit their Briefs addressing the legal issues set forth in Appellant's Notice of Appeal to the Board by October 25, 2007;
2. Board Staff shall submit their Staff Report containing their recommendation to regarding disposition of the appeal to the Board by November 5, 2007; and
3. The parties shall submit any Rebuttal Briefs to the Board by November 13, 2007.

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Dated: November 1, 2007
By: [Signature]
Witness: [Signature]
TO: Respondent - [Name]

DECLARATION OF SERVICE BY MAIL

In the Matter of: **WARING'S DUMP; KRISHNA LIVING TRUST; AND, RAGHVENDRA SINGH vs. SACRAMENTO COUNTY ENVIRONMENTAL MANAGEMENT DEPARTMENT;**

APPEAL OF DECISION BY THE OFFICE OF ADMINISTRATIVE HEARINGS REGARDING NOTICE OF PENALTY ASSESSMENT AND PENALTY ORDER ISSUED MARCH 7, 2007 BY SACRAMENTO COUNTY ENVIRONMENTAL MANAGEMENT DEPARTMENT AS THE LOCAL ENFORCEMENT AGENCY

Case No.: NONE

I declare:

I am employed in the Legal Office of the California Integrated Waste Management Board, which is the office of a member of the California State Bar under which member's direction this service is made. My business address is California Integrated Waste Management Board, P.O. Box 4025, Sacramento, CA 95812-4025 and my business electronic mail address is ycox@ciwmb.ca.gov. I am 18 years of age or older and not a party to this matter.

On September 26, 2007, I served the attached **Board Staff Report** by placing it in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Mr. Raghvendra Singh
P.O. Box 162783
Sacramento, CA 95816
Appellant